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**IN THE  
COURT OF APPEALS OF INDIANA**

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GARY O. BOVEY, TARA BOVEY,  
and PERFECTION PAINTING UNLIMITED, LLC,

Appellants-Defendants,

vs.

ROSS A. NICHOLS, SHARON K. NICHOLS,  
and PERFECTION ENTERPRISES, INC.,

Appellees-Plaintiffs.

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No. 49A02-0508-CV-812

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Gary L. Miller, Judge  
Cause No. 49D05-0502-CT-7499

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**September 1, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellants-Respondents Gary O. Bovey, Tara Bovey, and Perfection Painting Unlimited, LLC (collectively “Appellants”) appeal the trial court’s grant of a preliminary injunction in favor of Appellees-Petitioners Ross A. Nichols, Sharon K. Nichols, and Perfection Enterprises, Inc. (collectively, “Appellees”). We affirm.

## **Issues**

Appellants raise three issues, which we restate as:

- I. Whether the trial court’s judgment granting the preliminary injunction constitutes an abuse of discretion because it is based upon several improper findings of fact and conclusions thereon;
- II. Whether the trial court abused its discretion by granting Perfection Enterprises’s petition for preliminary injunction, which enjoined Appellees from doing business as Perfection Painting Unlimited, absent a showing of unfair competition; and
- III. Whether the trial court violated Tara Bovey and Perfection Painting Unlimited’s due process rights by enjoining them from using the name “Perfection Painting Unlimited,” despite the fact that they were not parties at the time of the hearing on the preliminary injunction.

## **Facts and Procedural History**

In 1991, Ross and Sharon Nichols (the “Nicholses”) started a business known as “Perfection Painting,” which offered its customers a myriad of home improvement services, including interior and exterior painting, dry wall repairs, wallpaper removal, insulation, remodeling, exterior repairs, and deck restoration. Tr. at 17. Several months later, the Nicholses formed another sole proprietorship, which they called “Perfection Landscaping.” Id. As both companies grew, the Nicholses “incorporated under a name of Perfection Enterprises, . . . but continued to advertise as Perfection Painting and Perfection

Landscaping.”<sup>1</sup> Id. at 18. Perfection Enterprises advertises its painting services in the telephone book under the name “Perfection Interior and Exterior Painting.” Pl.’s Ex. 1. It also advertises by distributing approximately 50,000 flyers per year, using the name “Perfection Painting.” Pl.’s Ex. 12. The flyers, as well as client referrals, generate most of Perfection Enterprises’s business.

In June of 2001, Perfection Enterprises hired Gary Bovey as a painter. On November 30, 2001, Mr. Bovey took a temporary leave of absence from the company because he was incarcerated “for counterfeiting.”<sup>2</sup> Id. at 34. However, when Mr. Bovey was released on probation, he resumed working as a painter for Perfection Enterprises and eventually became field supervisor or project manager.

On November 14, 2004, after receiving numerous customer complaints and having grown distrustful of Mr. Bovey, Mr. Nichols, on behalf of Perfection Enterprises, terminated Mr. Bovey’s employment with the company. On March 9, 2005, Mr. Bovey’s wife, i.e., Tara Bovey, formed a company known as “Perfection Painting Unlimited, LLC.” Pl.’s Ex. 8; Tr. at 206. Although Mr. Bovey does not have an ownership interest in his wife’s company, he does “help manage it.” Tr. at 204. At some point, Mr. Bovey contacted Richard A. Myer (“Myer”), an independent contractor who had previously done business with Perfection

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<sup>1</sup> Mr. Nichols testified that, although Perfection Enterprises advertises as Perfection Painting and Perfection Landscaping, the company did not file a certificate of assumed name, pursuant to Indiana Code Section 23-15-1-1, until March 21, 2005. That statute provides, in relevant part:

[A] corporation conducting business in Indiana under a name, designation, or title other than the name of the corporation as shown by its articles of incorporation . . . shall file for record, in the office of the recorder of each county in which a place of business or an office of the . . . corporation . . . is situated, a certificate stating the assumed name or names to be used, and, . . . in the case of a corporation . . . the full name and the address of the corporation’s . . . principal office in Indiana.

Ind. Code § 23-15-1-1(a)(2).

Enterprises, and asked “if [Myer] had some work that [he] could send [Mr. Bovey’s] way.” Id. at 79. Myer responded, “send me some information.” Id.

Approximately one week later, on March 18, 2005, Myer received a letter from Mr. Bovey, as “Manager” of “Perfection Painting Unlimited, LLC.” Pl.’s Ex. 8. In the letter, Mr. Bovey described his company’s painting business and stated: “It’s been a pleasure working with you in the past and hopefully you’ll give us an opportunity to serve you in the future.” Id. Upon receipt of the letter, Myer was confused as to whether Mr. Bovey was still working for Perfection Enterprises. Myer testified: “[Mr. Bovey] sent me the information, and when it said ‘Perfection’ on it, I called [Mr. Nichols] and I said, [i]s this guy with you or not with you?” Tr. at 79.

Mr. Bovey sent a similar letter to another independent contractor, i.e., Mr. Caserotti, who had worked with Perfection Enterprises. This second letter, dated March 21, 2005, also contains the following sentence: “It’s been a pleasure working with you in the past and hopefully you’ll give us an opportunity to serve you in the future.” Pl.’s Ex. at 9. However, neither Mr. Bovey, in his individual capacity, nor Perfection Painting Unlimited, LLC, had ever done business with these contractors in the past. Mr. Bovey explained that he included that language in the letters because he had previously contacted Myer and Mr. Caserotti, by telephone, and had asked them to send him business.

On February 25, 2005, Perfection Enterprises filed a Verified Complaint for Damages and Request for Preliminary and Permanent Injunction” against Mr. Bovey. In relevant part, the Complaint seeks to enjoin Mr. Bovey from using a cellular telephone number, which may

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<sup>2</sup> Previously, Mr. Bovey had gotten into legal trouble for altering the mileage on an odometer.

be associated with Perfection Enterprises, and from engaging in unfair competition by “using a name (Perfection Painting) so similar to Perfection Enterprises that reasonable persons would easily not be able to discern which company was which.” Appellants’ App. at 10. In response, Mr. Bovey filed a third-party complaint against Appellees, alleging, in part, that the Nicholises had agreed to give him the painting business after Mr. Nichols retired and, further, that Mr. Nichols advised him to open a separate business account at Porter Paints using the name “Perfection Painting and Remodeling.” Id. at 34.

On April 29, 2005, Perfection Enterprises requested leave to amend the Complaint to include as defendants, Tara Bovey and Perfection Painting Unlimited, LLC. The motion alleges, in part:

3. After the filing of this action, Defendant Gary Bovey and Tara Bovey formed a Limited Liability Company by the name of Perfection Painting Unlimited, LLC in a blatant and obvious attempt to unlawfully procure an advantage by using the good and well known name of Perfection Painting that had been utilized by [Perfection Enterprises] for a significant period of time.

Id. at 76. A copy of the motion for leave to amend, as well as the amended complaint, was served on Richard Bovey, i.e., the attorney for Appellants. Perfection Enterprises also requested an emergency hearing for preliminary injunction, which the trial court granted.

On May 10, 2005, the trial court conducted a preliminary injunction hearing. On June 10, 2005, the trial court granted Perfection Enterprises’s petition for a preliminary injunction and enjoined Appellants “from using the name ‘Perfection Painting Unlimited, LLC’ or other name that would reasonably confuse their services and business with that of [Perfection Enterprises] during the pendency of this action.” Id. at 159. In so doing, the trial court

entered the following relevant findings of fact and conclusions thereon:

### FINDINGS OF FACT

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10. On or about March 18 and March 21, 2005, [Mr. Bovey,] on behalf of Perfection Painting Unlimited, LLC, sent unsolicited letters to Mr. Anthony Casseroti [sic] and [Myer] which were admitted into evidence. The letters were on letterhead titled "Perfection Painting Unlimited" and contained a sentence stating, "It's been a pleasure working with you in the past and hopefully you'll give us an opportunity to serve you in the future. If you have any other questions or would like any additional information, please don't hesitate to call me at 317-410-3082".
11. The phone number identified in the letter above is a phone number that has been used on [Perfection Enterprises's] advertising and business cards in the past. Copies of phone book advertisements and flyers were admitted into evidence in this matter evidencing this fact.
12. [Myer,] one of the recipients of the letters testified that when he received the letter, he had some confusion about exactly who had sent the letter based upon the name used in the letter.
13. [Myer] called [Mr. Nichols,] president of [Perfection Enterprises,] after receiving the letter because he didn't know if it was part of his business or not.
14. [Myer] testified that his confusion was based upon the name used and the fact that there was no identification in the letter that the company (Perfection Painting Unlimited, LLC) is a new company seeking new business.
15. There is no indication in the letters above mentioned that Perfection Painting Unlimited, LLC is a new company and the letters make an affirmative representation that Perfection Painting Unlimited, LLC has done business with the customers in the past.

\* \* \* \* \*

### CONCLUSIONS OF LAW

6. In the present case, [Mr. Bovey] claims that his decision to use the name Perfection Painting Unlimited was in no way related to his previous employment with [Perfection Enterprises] and that it was his wife's decision. [Mr. Bovey's] testimony in this regard was completely unpersuasive and no credible evidence was presented that would support this contention. Indeed, all the evidence presented leads to the unmistakable conclusion that [Mr. Bovey's] use of this particular name was in an effort to deceive and confuse potential customers into believing that his business was that of [Perfection Enterprises.] The letter that [Mr. Bovey] admitted he sent to customers on behalf of the LLC is unmistakable evidence of this fact. At no point in the letter did [Mr. Bovey] mention that the LLC was a new company and he falsely asserted that the LLC had "done business in the past" with the customers. [Perfection Enterprises] has established a prima facie case that has a reasonable likelihood of success at trial.

Id. at 152-53; 156. This interlocutory appeal by Appellants ensued.<sup>3</sup>

## **Discussion and Decision**

### I. Propriety of the Trial Court's Findings of Fact

On appeal, Appellants first argue that the preliminary injunction, which enjoins them from doing business as Perfection Painting Unlimited, constitutes an abuse of discretion inasmuch as it is based upon improper findings and conclusions. When determining whether to grant a preliminary injunction, the trial court is required to make special findings of fact and state its conclusions thereon. Ind. Trial Rule 52(A); see also Barlow v. Sipes, 744 N.E.2d 1, 5 (Ind. Ct. App. 2001) (citing), trans. denied. When findings and conclusions are made, we must determine if the trial court's findings support the judgment. Id. We will reverse the trial court's judgment only when it is clearly erroneous. Id. Findings of fact are

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<sup>3</sup> Indiana Appellate Rule 14(A)(5) provides that an appeal from the grant of a preliminary injunction is taken as a matter of right by the filing of a Notice of Appeal. Appellants filed their notice of appeal on July 2, 2005.

clearly erroneous when the record lacks evidence or reasonable inferences from the evidence to support them. Id. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. CSX Transp., Inc. v. Rabold, 691 N.E.2d 1275, 1277 (Ind. Ct. App. 1998), trans. denied. We consider the evidence only in the light most favorable to the judgment and construe findings together liberally in favor of the judgment. Barlow, 744 N.E.2d at 5.

Appellants contend that the evidence presented at the preliminary injunction hearing does not support several of the trial court's findings of fact. In particular, Appellants take issue with Findings 10, 12, 13, 14, and 15. With respect to Finding 10, for example, Appellants maintain that, because Myer told Mr. Bovey to "send [him] some information," the March 18, 2005 letter was not "unsolicited." Tr. at 79. We find this argument unpersuasive.

The record reveals that Mr. Bovey made an unsolicited telephone call to Myer requesting painting referrals and that, in response, Myer asked Mr. Bovey to send him some information.<sup>4</sup> The fact that Myer preferred to review written information about the painting company, rather than engage in a telephonic conversation with Mr. Bovey, did not alter the unsolicited nature of Mr. Bovey's "solicitation for business." Accordingly, the evidence supports Finding 10, as it relates to Myer.

Appellants also challenge the reference in Finding 10 that the March 21, 2005 letter, which was sent by Mr. Bovey to Mr. Caserotti, was unsolicited. Appellants recognize that Mr. Bovey sent the March 21, 2005 letter requesting business referrals, but argue that, in the

absence of Mr. Caserotti's testimony, the record is devoid of any evidence suggesting that such letter was unsolicited. Again, we must disagree.

At the preliminary injunction hearing, Mr. Nichols testified that when Mr. Caserotti received the correspondence in question, he contacted Mr. Nichols to determine if Mr. Bovey was associated with Perfection Enterprises. Specifically, Mr. Nichols testified:

Exhibit 9 is a letter that was sent to another contractor that we've done work with for over two years, and a letter that was sent to him and it raised some questions about what are we doing.

Tr. at 56. In addition, Mr. Nichols testified that he "found out about these letters" from his customers, i.e., Myer and Mr. Caserotti. Id.

Further, it is important to note that the March 18, 2005 letter—which was the unsolicited communication sent by Mr. Bovey to Myer—and the March 21, 2005 letter begin with the same greeting: "I have enclosed the following information for your review regarding our painting company." Pl.'s Ex. 8, 9. This evidence, when construed liberally in favor of the judgment, supports the trial court's finding that the letter addressed to Mr. Caserotti was unsolicited.

Next, Appellants maintain that Findings 12 through 15 are clearly erroneous. However, in their brief, Appellants do not assert that these findings lack evidentiary support.<sup>5</sup>

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<sup>4</sup> On cross-examination, Myer explained: "I get this stuff all the time. And it's – you know, I have contractors call me every day looking for business." Tr. at 80.

<sup>5</sup> Indeed, in this section of their appellate brief, Appellants recite a portion of Myer's hearing testimony, which considered in a light favorable to the judgment demonstrates that: (1) upon his receipt of the March 18, 2005 letter, Myer was confused "as to exactly who had sent it" because of the name (i.e., Finding 12); and (2) Myer looked at the letter, saw the name "Perfection," called Mr. Nichols to determine whether Mr. Bovey was with Perfection Enterprises (i.e., Finding 13); and (3) Myer could not remember if, during the telephone conversation, Mr. Bovey informed him that Mr. Bovey had separated from Mr. Nichols and had opened a new company (i.e., Finding 14). Appellants' Br. at 6-8 (citing Tr. at 77-78). In addition, our review of the March 18, 2005 letter reveals that Mr. Bovey did not indicate in such letter that Perfection Painting Unlimited was a

Rather, the crux of Appellants' argument is that, because Mr. Nichols only testified to three instances of customer confusion over the name of Perfection Painting Unlimited and its association with Perfection Enterprises, the evidence does not support the trial court's conclusion that Appellants engaged in unfair competition, i.e., Conclusion 6. We address this contention in the following section.

## II. Propriety of the Preliminary Injunction

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new company. Pl.'s Ex. 8; see also Pl.'s Ex. 9. Instead, the letter provides: "It's been a pleasure working with you in the past and hopefully you'll give us an opportunity to serve you in the future." Id. This evidence supports Findings 12 through 15.

Nevertheless, Appellants contend that "[t]he trial court's finding that the letters were sent in an effort to deceive the recipients is untenable in light of the testimony of [Myer] that Mr. Bovey told him that a new business had been started." Appellants' Br. at 8. Myer testified, in relevant part:

Q Okay. And did Mr. Bovey make that phone call?

A Yes, to my knowledge. I mean he introduced himself as Gary.

Q And did he ever say, I have opened a new company to your knowledge?

A Yes.

Q And in terms of this solicitation, it doesn't identify that the company is new, though; is that right?

A No. I mean that's where the confusion came in.

\* \* \* \* \*

Q Okay. And during that phone conversation did [Mr. Bovey] tell you I'm working for a new limited liability company, Perfection Painting Unlimited?

A I don't remember the whole conversation.

Q You don't remember?

A Well, I mean I don't remember the conversation per se. It was – he called me and we –

Q But you knew at that time that – he didn't say that he was still working for Perfection Enterprises, did he?

A Not that I remember.

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A He called me and asked me if I had some work that I could send his way. And I said send me some information. He sent me the information, and when it said "Perfection" on it, I called [Mr. Nichols] and I said, Is this guy with you or not with you? And then [Mr. Nichols] asked me to send him the letter and I did.

Q Well, you knew from your dealings in the past with Perfection Enterprises, Incorporated that it was a corporation, right?

A Yeah.

Q Okay. And you knew that [Mr. Bovey] was working on behalf of a limited liability company?

A I didn't pay that close attention, sir.

Q Okay, you didn't pay attention?

A I just looked at it, I seen "Perfection" and I made the call to [Mr. Nichols.]

Appellants next contend that that the trial court’s grant of the preliminary injunction at issue constituted an abuse of discretion because the findings do not support the conclusion that Appellants engaged in unfair competition by doing business as “Perfection Painting Unlimited.” The grant or denial of a request for a preliminary injunction rests within the sound discretion of the trial court, and our review is limited to whether there was a clear abuse of that discretion. Ind. Family & Soc. Servs. Admin. v. Walgreen Co., 769 N.E.2d 158, 161 (Ind. 2002). That said, “[t]he power to issue a preliminary injunction should be used sparingly, and such relief should not be granted except in rare instances in which the law and facts are clearly within the moving party’s favor.” Id.

To obtain a preliminary injunction, the moving party has the burden of showing by a preponderance of the evidence that:

- (1) [movant’s] remedies at law were inadequate, thus causing irreparable harm pending resolution of the substantive action;
- (2) it had at least a reasonable likelihood of success at trial by establishing a prima facie case;
- (3) its threatened injury outweighed the potential harm to appellant resulting from the granting of an injunction; and
- (4) the public interest would not be disserved.

Robert’s Hair Designers, Inc. v. Pearson, 780 N.E.2d 858, 863 (Ind. Ct. App. 2002) (quoting Walgreen, 769 N.E.2d at 161). The movant, i.e., Perfection Enterprises, must prove each of these requirements to obtain the preliminary injunction. Pearson, 780 N.E.2d at 863.

Here, Appellants do not specify which of the four requirements Perfection Enterprises

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Tr. at 77-78. This evidence, which shows that the written communication from Mr. Bovey did not indicate that he was the manager of a new company, supports the findings at issue.

purportedly failed to prove at the preliminary injunction hearing. Instead, Appellants merely maintain that the trial court abused its discretion when it granted the preliminary injunction in question because the evidence demonstrating three instances of customer confusion does not support the trial court's conclusion that Appellants engaged in unfair competition. Appellants further argue that the preliminary injunction is improper because the term "perfection" is "nothing more than a generic name used to describe the claimed quality of the painting services provided" and, thus, "[t]he trial court gave the plaintiff a monopoly on the use of that description in connection with painting." Appellants' Br. at 16-17. Therefore, rather than engage in a lengthy discussion of the sufficiency of each requirement necessary to sustain a preliminary injunction, we confine our analysis to Appellants' specific claims of error.

Indiana courts have created a cause of action for unfair competition, defined as "the attempt to create confusion concerning the source of the unfair competitor's goods." Felsher v. Univ. of Evansville, 755 N.E.2d 589, 598 (Ind. 2001); see also Hartzler v. Goshen Churn & Ladder Co., 55 Ind. App. 455, 104 N.E. 34 (1914). This common law tort was historically considered "a subspecies of the class of torts known as tortious interference with business or contractual relations." WILLIAM L. PROSSER, PROSSER, LAW OF TORTS 956 (4th ed. 1971).

In Hartzler, this Court described unfair competition as "any conduct, the natural and probable tendency and effect of which is to deceive the public so as to pass off the goods or business of one person as and for that of another. . . ." 55 Ind. App. at 464, 104 N.E. at 37 (citations omitted). The Hartzler Court further explained:

Unfair competition is always a question of fact. The question to be determined

in every case is whether or not, as a matter of fact, the name or mark used by defendant has previously come to indicate and designate plaintiff's goods, or to state it another way, whether defendant, as a matter of fact, is by his conduct passing off his goods as plaintiff's goods, or his business as plaintiff's business.

Id. at 465-66, 104 N.E. at 38 (citation omitted).

Professor Prosser's successor has characterized such causes of action in the following manner:

Unfair competition . . . does not describe a single course of conduct or a tort with a specific number of elements; it instead describes a general category into which a number of new torts may be placed when recognized by the courts. The category is open-ended, and nameless forms of unfair competition may be recognized at any time for the protection of commercial values.

W. PAGE KEETON, PROSSER AND KEETON ON THE LAW OF TORTS 1015 (5th ed. 1984).

Professor Prosser illustrated unfair competition as follows: "Though trade warfare may be waged ruthlessly to the bitter end, there are certain rules of combat which must be observed. The trader has not a free lance. Fight he may, but as a soldier, not as a guerilla." WILLIAM L. PROSSER, PROSSER, LAW OF TORTS 956 (4th ed. 1971); see also Felsher, 755 N.E.2d at 598.

Appellants contend that the evidence revealing three instances of customer confusion, i.e., Myer, Mr. Caserotti, and a paint supplier, does not support the trial court's conclusion that Appellants engaged in unfair competition. To support this contention, Appellants rely upon Harad v. Sears, Roebuck & Co., 204 F.2d 14, 18-19 (7th Cir. 1953), cert. denied, 346 U.S. 914 (1953), wherein the court held that "[i]solated cases of confusion do not justify a finding that actual confusion is established nor warrant the entry of a judgment for damages." Harad, however, is readily distinguishable from the case at bar.

There, the Indiana district court found that actual confusion and mistake on behalf of the public was established by the introduction into evidence of two letters. Id. at 18. On review, the Seventh Circuit determined that the text of the two letters in question did not demonstrate any confusion between the parties' products. Id. at 18-19. Rather, in one letter, the author indicated a clear preference for one company's product, over the other. Id. at 18. In the other, the author recognized that the new truss or product, which was being sold at Sears, was not manufactured by Harad and "pointed out in his letter the various differences in the trusses." Id. at 19.

In the present case, however, Myer's testimony clearly indicates that, upon receiving the March 18, 2005 letter, he was confused about Mr. Bovey's association with Perfection Enterprises and, further, that such confusion resulted from the use of the name "Perfection Painting Unlimited." Mr. Nichols also testified that when his customers received advertisement letters from Mr. Bovey, as the manager of Perfection Painting Unlimited, "it raised some questions about what [Perfection Enterprises was] doing." Tr. at 56. Indeed, Mr. Nichols discovered that Mr. Bovey was doing business as Perfection Painting Unlimited through Perfection Enterprises's customers, who forwarded the letters to Mr. Nichols.

This confusion was buttressed by Mr. Bovey's inclusion in the letters of the following clause: "It's been a pleasure working with you in the past and hopefully you'll give us an opportunity to serve you in the future." Pl.'s Ex. 8, 9. The record indicates that, Mr. Bovey, as manager for Perfection Painting Unlimited, had never done business with these contractors in the past. By his own admission, Mr. Bovey included this misleading language in the letters because he had previously contacted Myer and Mr. Caserotti by telephone to ask them

to send him business.

In addition, Mr. Nichols explained that Appellants' use of the name "Perfection Painting" "has caused confusion in [the Porter Paint store] when paint is purchased." Id. at 60. He explained, "I have very strong concerns about getting their purchases on our account." Id. This evidence demonstrates that Mr. Bovey, via his position as manager of Perfection Painting Unlimited, was passing off his business as Appellees' painting business by confusing the public and taking advantage of Perfection Enterprises's good will and reputation. As such, the trial court did not err by determining that Appellants engaged in unfair competition.

Nevertheless, Appellants assert that the trial court improperly enjoined them from using the phrase "Perfection Painting" as part of their business name because such terms are merely generic references to describe "the claimed quality of the painting services provided." Appellants' App. at 16. In Hartzler, however, the Court noted:

Even descriptive and generic names may not be used in such a manner as to pass off the goods or business of one man as and for that of another. Where such words or names by long use have become identified in the minds of the public with the goods or business of a particular trader, it is unfair competition for a subsequent trader to use them in connection with similar goods or business in such a manner as to deceive the public and pass off his goods or business for that of his rival. Accordingly the right to use generic names and descriptive terms is regulated by the courts in accordance with certain general rules already stated. Thus such terms may not be used in such a manner as to cause unnecessary deception of the public and damage to the complainant. It is unnecessary for the subsequent trader to use such terms in such a manner as to give his goods the same short name, or trade-name, in the market as that of the prior trader's goods, for it is easy to use such terms in some other honestly descriptive way without injury to any right of either party.

55 Ind. App. at 464-65, 104 N.E. at 38 (quoting 38 Cyc. 800). Accordingly, the mere fact

that the words “perfection painting” may be generic terms does not alter our analysis that Appellants engaged in unfair competition.

### III. Due Process

Lastly, Appellants maintain that the trial court violated the due process rights of Tara Bovey and Perfection Painting Unlimited, LLC when it enjoined them from doing business as Perfection Painting Unlimited, and from using a similar name, because Perfection Enterprises had not yet made them parties to the action at the time of the hearing on the preliminary injunction. The record reveals that, on February 25, 2005, Perfection Enterprises filed its Complaint against Mr. Bovey—Tara Bovey’s husband—seeking to enjoin him from engaging in unfair competition by using the name Perfection Painting in his business and advertisements.

Thereafter, on April 29, 2005, Perfection Enterprises requested leave to amend the Complaint to include as defendants, Tara Bovey and Perfection Painting Unlimited, LLC—the business allegedly owned solely by Mrs. Bovey and managed by Mr. Bovey. A copy of this motion, as well as the amended complaint was served on Richard Bovey, i.e., the attorney for all Appellants. Further, although the Chronological Case Summary does not indicate when the trial court granted Perfection Enterprises leave to file the amended complaint, the preliminary injunction order of June 10, 2005, includes the following finding: “9. The court, prior to the entry of this preliminary injunction, granted [Perfection Enterprises’s] Motion to Amend Complaint.” Appellants’ App. at 152.

In light of this procedural posture, Appellants assert that Tara Bovey and Perfection Painting Unlimited were deprived of their due process rights. An essential principle of due

process is that a deprivation of life, liberty, or property “be preceded by notice and opportunity for hearing appropriate to the nature of the case.” Howard v. Inc. Town of N. Judson, 661 N.E.2d 549, 553 (Ind. 1996) (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950)).

Here, however, we find it hard to believe that Tara Bovey, the spouse of Mr. Bovey and owner of the business enjoined, was unaware of the proceedings in question. We find it equally unavailing that Perfection Painting Unlimited, which is managed by Mr. Bovey, did not know of the dispute regarding its name. In this vein, we observe that Attorney Richard Bovey received notice of Perfection Enterprises’s intent to amend its Complaint to add the two additional defendants on April 29, 2005. Attorney Bovey serves as the attorney for Mr. Bovey, Tara Bovey, and Perfection Painting Unlimited. Because Attorney Bovey acted as Tara Bovey and the company’s agent, his conduct and knowledge about the lawsuit can be imputed to them. See, e.g., Houchins v. Kittle’s Home Furnishings, 589 N.E.2d 1190, 1195 (Ind. Ct. App. 1992) (holding that the knowledge of an attorney, gained through a letter received while acting for a client and within the scope of his employment, is deemed to be the knowledge of the client).

Moreover, one need not be a party to be bound by a lawful injunction. Bratton v. MGK, Inc., 587 N.E.2d 134, 136-37 (Ind. Ct. App. 1992) (concluding that nonparty was subject to injunction). In their reply brief, the Appellants cite Indiana Trial Rule 65(A), which requires “an opportunity for a hearing upon notice to the adverse party.” However, they make no mention of Indiana Trial Rule 65(D), which provides that a temporary injunction is binding upon “the parties to the action, their officers, agents, servants,

employees, and attorneys, *and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.*” (Emphasis added.) As this Court explained, “If a party is bound by an injunction or TRO through actual knowledge, then the trial court has necessarily acquired personal jurisdiction over that party for purposes of the TRO or injunction.” Reed Sign Serv., Inc. v. Reid, 755 N.E.2d 690, 697 (Ind. Ct. App. 2001), trans. denied.

Here, the evidence clearly establishes that Tara Bovey and Perfection Painting Unlimited, LLC were acting in active concert and participation with Gary Bovey. And Appellants make no claim that Tara Bovey failed to receive actual notice of the injunction. Indeed, she was apparently a party at the time the trial court granted the preliminary injunction. Further, Tara Bovey’s knowledge can be imputed to her company, Perfection Painting Unlimited, LLC. See AutoXchange.com, Inc. v. Dreyer and Reinbold, Inc., 816 N.E.2d 40, 51 (Ind. Ct. App. 2004). Accordingly, under the circumstances presented, we find no due process violation.

For the foregoing reasons, we affirm the trial court’s grant of the preliminary injunction.

Affirmed.

KIRSCH, C.J., and CRONE, J., concur.